

NTSB Order No. EA-4144

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of April, 1994

Respondent.

Docket SE-12258

¹A copy of the order is attached.

As explained infra, we grant the Administrator's appeal and reverse the law judge's order dismissing the complaint.²

The alleged violations occurred on April 3, 1990, and came to the attention of the FAA's Lubbock, Texas, Flight Standards District Office (FSDO) on April 17. After the case was referred to the Office of Assistant Chief Counsel for the Southwest Region in Ft. Worth, a Notice of Proposed Certificate Action (Notice) was sent on October 1, 1990, to respondent at his permanent address of record, via certified mail, return receipt requested.³

After the post office returned the Notice, stamped "Return to Sender Moved Left No Address," FAA counsel enlisted the help, on October 24, 1990, of the FAA Civil Aviation Security Office to locate respondent. Over the next several months, eight other mailings were sent to respondent at addresses believed to be his, but to no avail.⁴ Finally, the Administrator's counsel learned

²The Administrator's order sought to suspend respondent's mechanic certificate with airframe and powerplant ratings and inspection authorization for 180 days. Respondent had allegedly certified as airworthy an aircraft that did not meet all applicable airworthiness requirements, in violation of Federal Aviation Regulation (FAR) section 43.15(a)(1).

³Under FAR section 65.21, a certificate holder is required to notify in writing the Airman Certification Branch of the FAA in Oklahoma City within 30 days after any change in his or her permanent mailing address.

⁴One address discovered by the security office belonged to respondent's ex-wife. She provided the only address she had for respondent, but when the Assistant Chief Counsel's Office sent the notice there on March 15, 1991, it was returned marked "Return to Sender Forwarding Order Expired." Another address located by the security office turned out to belong to a different David Thibodeaux.

of respondent's business address through the Dallas FSDO and sent the Order of Suspension to this address on November 8, 1991, via certified mail, return receipt requested; regular mail; and facsimile. Respondent received the order on November 12, 1991, admittedly more than six months after the date of the alleged violation.

The law judge found that the Administrator did not exercise due diligence in notifying respondent of the impending certificate action and, consequently, he dismissed the Administrator's complaint as stale under Rule 33 of the Board's Rules of Practice and Procedure, 49 C.F.R. section 821.33.⁵ He inferred that respondent, by informing the Dallas FSDO of his new business address, had, in fact, provided the Administrator with a current mailing address. We disagree and reverse the law judge's

⁵49 C.F.R. § 821.33 provides, in pertinent part, as follows:

§ 821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or for imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint.

order.

Contrary to the law judge's characterization, the key issue is whether the Administrator had good cause for the delay in notifying respondent of the proposed certificate action. Given the circumstances, we believe that good cause existed.

Respondent knew that the Lubbock FSDO was investigating the inspection that he performed on April 3, 1990. In fact, he wrote a letter to an inspector at the Lubbock FSDO, dated April 18, 1990, giving his side of the story. The return address on this letter was the address where FAA Counsel first mailed the Notice in October 1990. Despite the knowledge that an investigation had been initiated, respondent left no forwarding address when he moved, did not alert the Lubbock FSDO, and did not inform the FAA Airman Certification Branch of his new address, as required by regulation. Supra, n. 3.

Respondent maintains that the FAA knew his current business address because he had filed it, along with an application for renewal of inspection authorization, with the Dallas FSDO. This address also appeared on his temporary airman certificate, dated October 3, 1991, and medical certificate, dated October 16, 1991.⁶ However, that the local FSDO had respondent's current

⁶Respondent argues that the Administrator has no system in place whereby an airman can verify that the Airman Certification Branch actually made a requested address change, thus implying that the Administrator could not prove that respondent did not send in his new address. His argument is based on conjecture and is not relevant to his case, as he has not asserted that he ever notified the Airman Certification Branch in writing of his new address.

business address is not the issue. The sole reason respondent did not receive the Notice within the six-month period was that he did not fulfill his duty to update his permanent address of record. Within the six-month period, the Administrator obtained the address on file with the Airman Certification Branch and mailed the Notice to respondent. The act of sending notice to respondent's address of record, in and of itself, constitutes due diligence. Administrator v. Davila-Ramos, NTSB Order No. EA-3939 at 5 (1993).⁷

If, as required under FAR section 65.21, respondent had informed the Airman Certification Branch of his address change, he would have received the Notice that was overnight mailed October 1, 1990, within the necessary six-month time frame. Given these facts, we believe that the Administrator showed good cause for the delay.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The law judge's order is reversed; and
3. The case is remanded for a hearing on the merits.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT and HALL, Members of the Board, concurred in the above opinion and order.

⁷In Davila-Ramos, the respondent also claimed that the local FSDO knew where to reach him and, therefore, the Administrator's counsel was not duly diligent because he did not learn of this address from the FSDO. We disagreed, finding that service to respondent at his address of record was sufficient. Id. at 5.